

Exhibit 3

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1934

CONGRESSIONAL RECORD—SENATE

8683

UNITED STATES SECURITIES ACT OF 1933—con.

BRITISH COMPANIES ACT OF 1929—con.

COMMENTS—con.

(4) in the exercise of its powers under paragraphs (2) and (3) of this subsection, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use and by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate to such use and consistent with the public interest and the protection of investors.

(c) The statements or information required to be included in a prospectus by or under authority of subsection (a) or (b), when written, shall be placed in a conspicuous part of the prospectus in type as large as that used generally in the body of the prospectus.

(d) In any case where a prospectus consists of a radio broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms of prospectuses used in connection with the sale of securities registered under this title.

Civil liabilities on account of false registration statement

Sec. 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated herein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions), or partner in, the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

(g) Whether or not the shares offered are fully paid up; and if not, to what extent they are paid up.

(h) Whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in Great Britain or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted.

(i) Where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Great Britain where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued (sec. 356 (3)).

37. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

Under the United States act any person acquiring the security may recover from the persons liable, whereas under the British act only the person who originally subscribed "on the faith of the prospectus" can recover. Moreover, under the British act the person can only recover the "loss or damage" sustained by reason of the "untrue statement" (sec. 37) or of "the omission" (sec. 35).

Section 37 of the British act provides liabilities where an "untrue statement" is contained in the prospectus. Section 35 of the British act provides for liability where the prospectus does not comply with the requirements of that section (omits to state facts required to be stated). No definite civil liability is set up by section 35, but the British courts have held civil liability to arise by violation of that section. Section 35 gives broader defenses than section 37. The provisions of section 35 are set forth separately at the end of section 11 of the United States act as the provisions of sections 37 and 35 could not both be parallel to section 11.

(a) every person who is a director of the company at the time of the issue of the prospectus; and ("director" includes any person occupying the position of director by whatever name called;) (Sec. 380)

(b) every person who has authorized himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and

See section 38 of the British act where an offer for sale to the public in relation to securities allotted by the company with a view to their being offered to the public is made a "prospectus", and civil liability is the same as if the securities had been offered direct to the public, "but without prejudice to the liability, if any, of the persons by whom the offer is made in respect to misstatements contained in the document or otherwise in respect thereof." (Sec. 38.)

(c) every person being a promoter of the company; and

(d) every person who has authorized the issue of the prospectus,

shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—